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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11	WARNER/CHAPPELL MUSIC, INC.,)	Case No. CV 12-10022 DDP (JCx)
	a Delaware corporation;)	
12	WARNER-TAMERLANE PUBLISHING)	ORDER DENYING PLAINTIFF'S EX
	CORP., a California)	PARTE APPLICATION TO CONTINUE
13	corporation; WB MUSIC CORP.,)	TRIAL DATE
	a California corporation;)	
14	UNICHAPPELL MUSIC, INC., a)	[Dkt. No. 38]
	Delaware corporation, and)	
15	RIGHTSONG MUSIC, INC., a)	
	Delaware corporation,)	
16)	
	Plaintiffs,)	
17)	
	v.)	
18)	
	RAP-A-LOT 2K RECORDS, INC.)	
19	d/b/a Rap-A-Lot Records, a)	
	Texas corporation, and JAMES)	
20	PRINCE, an individual,)	
)	
21	Defendants.)	
22)	

For the second time in three weeks, there is before the Court an ex parte application to continue trial in this case. The first ex parte application was submitted by the Defendants on September 22, 2014. (Dkt. No. 33.) The Court denied that application on September 29, 2014, concluding that "the parties have apparently both failed to adhere to the deposition schedule." (Dkt. No. 37.)

1 Two weeks later, on October 13, 2014, Plaintiff submitted this
2 ex parte application to continue trial date. Although Plaintiff
3 had vigorously opposed Defendants' ex parte application to
4 continue, (Dkt. Nos. 34 & 36), Plaintiff now asks for essentially
5 the same relief Defendant had requested.

6 Plaintiff explains this puzzling turnabout by asserting an
7 unforeseen need to compel Defendants' production of certain
8 witnesses for deposition, as well as production of certain
9 documents. The parties submit competing declarations and exhibits,
10 each attempting to prove that the other side is responsible for the
11 delay in production.

12 The Court declines to attempt to sort out fault on an
13 incomplete record filed in an ex parte application. The proper
14 procedure for arguing misconduct or bad faith on the part of the
15 opposing party is a motion to compel production, submitted to the
16 magistrate, who oversees the discovery process. Plaintiff, though
17 well aware of the impending trial date, and aware as of August 20
18 that Defendant had produced neither its first witness for
19 deposition nor the requested documentary evidence, waited until
20 October 15 to file motions to compel. (Dkt. Nos. 40 & 41.)¹

21 Plaintiff states that it relied on representations by
22 Defendants' counsel that Defendants would voluntarily produce the
23 requested discovery. (Pl.'s Ex Parte Appl., § II.E.) However, it
24 was already apparent by the time Defendants filed the first ex
25 parte application that the goodwill between parties had broken
26 down. In its opposition to Defendants' application, Plaintiff

27
28 ¹These filings have since been vacated by the Magistrate.
(Dkt. No. 46.)

1 represented to the Court that "[d]espite Warner/Chappell's efforts,
2 Defendants have refused to resolve the . . . dispute informally."
3 (Dkt. No. 34 at 4:28-5:1.) Plaintiff also stated that it would
4 soon file motions to compel. (Id. at 5:11-14.) It was evident at
5 that point that the parties were no longer attempting to resolve
6 their issues collegially. It is also evident from the email
7 exhibits filed with this application that the parties had been
8 unable to do so for quite some time. (Hinkle Decl., Ex. R; Diggs
9 Decl., Ex. A.)

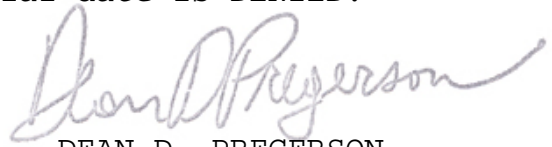
10 Nonetheless, rather than stipulating to continue so that
11 motions to compel could be filed or the discovery issues could
12 otherwise be resolved, Plaintiff argued strenuously against
13 continuing the trial date, (id. at 8:26-9:22), as well as dates for
14 fact discovery. (Id. 10:3-6.) Plaintiff could have stated non-
15 opposition to Defendants' application at least as to continuing the
16 trial date; it might also have offered some reasonable counter-
17 proposal that would have allowed for filing of motions to compel.
18 Instead, it chose to unambiguously oppose any continuance.

19 Having delayed filing its motions to compel by, at best,
20 nearly two months, and having unambiguously opposed Defendants'
21 recent application to continue the trial date, Plaintiff cannot now
22 come before the Court and ask for more time.

23 Good cause to modify the schedule not being found, the ex
24 parte application to continue the trial date is DENIED.

25 IT IS SO ORDERED.

26 Dated: October 20, 2014



DEAN D. PREGERSON
United States District Judge